

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5567 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-

and

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHANBTABEN R CHOKSI

SINCE DECEASED THRO HER HEIRS

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. Special Civil Application No. 5567 of 1991
MR KH KAJI for Petitioner No. 1-1/C
MR MANISH R BHATT for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 01/07/2004

ORAL JUDGEMENT

1 This petition under Article 226 of the Constitution of India challenges the order passed by the respondent on 11/3/1991 rejecting the application for waiver made by the petitioner under Section 273A(1) of the Income Tax Act, 1961 (the Act) for assessment years 1986-87 and 1987-88.

2 The brief facts necessary for the purpose of disposal of this petition are that :

On 27/5/1986 the Officers of the Enforcement Directorate conducted search at the residential premises of Shri Hemant S.Shah (son-in-law of the petitioner), Smt.Jayshri H.Shah (daughter of the petitioner) and Smt.Shantaben R.Chokshi (the petitioner). As the petitioner Smt.Shantaben R.Chokshi has since expired, the legal heirs have been brought on record with the permission of the Court and the deceased petitioner is now represented by petitioner nos.1A.to 1C.

3 It is an admitted position that from the premises of Hemant S.Shah Rs.15,93,600/- in Indian currency, US \$ 9530 and 100 Cents of Canadian currencies were seized along with National Savings Certificate valuing Rs.2,20,000/-. Simultaneously Bank locker standing in the joint names of the deceased petitioner and her daughter with State Bank of India, Raipur Branch, Ahmedabad was also searched by the Enforcement Directorate and the cash of Rs.17,90,000/- was seized. The amount of cash of Rs.17,90,000/- seized from locker no.189 was subsequently requisitioned and seized by the Income Tax Department under Section 132A of the Act.

4 On 29/5/1986 the deceased petitioner as legal heir of Dr.Rasiklal Chokshi (her pre-deceased husband) filed a petition disclosing income of Rs.8,00,000/- for each of the assessment years 1980-81 to 1985-86. Between 1/8/1986 and 8/8/1986 the officers of the Income Tax Department searched Bank lockers standing in the name of the deceased petitioner jointly with other persons and seized jewellery ornaments and silver utensils.

4.1 The deceased petitioner filed a disclosure petition on 30/9/1986 disclosing income of Rs.47,45,746/as legal heir of late Dr.Rasiklal Chokshi and such disclosure was pertaining to assessment year 1986-87. The disclosure was intended to cover most of the assets and ornaments found during course of search by the Enforcement Directorate.

4.2 The deceased petitioner filed another disclosure petition on 11/3/1987 stating that the assets had been received by her on the death of her late husband and benefit of the amnesty scheme be made available for assessment year 1986-87 in relation to the return of income already filed. Alternatively, the petitioner took a stand that in case the aforesaid petition was not acceptable to the department she was prepared to include the said assets in her hands for assessment 1987-88. Another petition came to be filed on the same line on 24/3/1987.

5 The deceased petitioner filed return of income for assessment year 1986-87 on 30/3/1987 returning income of Rs.40,000/- and on 27/7/1987 the deceased petitioner filed return of income for assessment year 1987-88 showing total income of Rs.47,48,790/- in her hands and the said return included the income of Rs.47,45,746/- which was disclosed in the petition dated 30/9/1986 in the case of her late husband for assessment year 1986-87.

6 For assessment year 1986-87 the petitioner was assessed on a total income of Rs.3,94,000/- on 29/3/1989. On the same day i.e. 29/3/1989 the assessment for assessment year 1987-88 was completed on total income of Rs.51,34,730/- against the returned income of Rs.48,48,790/-. In the assessment order proceedings for levy of penalty and charging of interest were initiated by the Assessing Officer. The deceased petitioner carried the matter in appeal for assessment year 1987-88 and by order dated 27/12/1989, C.I.T.(Appeals) IV, Ahmedabad allowed the appeal deleting the additions made and accepting the returned income. Interest levied under Section 217(1A) of the Act was also deleted.

6.1 The Revenue preferred Second Appeal before the Tribunal and the said Appeal came to be dismissed by the Income Tax Appellate Tribunal, Bench 'A' Ahmedabad vide order dated 22/1/2001.

7 It appears that in the meantime on 6/7/1989 the deceased petitioner filed Revision Petition for Assessment Years 1986-87 and 1987-88 under Section 273A(1) of the Act. The Commissioner of Income Tax, Gujarat III, Ahmedabad - respondent herein, rejected the said petition by order dated 11/3/1991 and the said order is challenged in the present petition only for Assessment Year 1987-88.

8 Mr.K.H.Kazi, learned Senior Advocate appearing on

behalf of the petitioner submitted that the petitioner has by affidavit dated 25/7/2002 placed on record details of certain events that have happened subsequently and orders that have been passed subsequent to the filing of the petition on 3/5/1991. Inviting attention to the order of the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' Ahmedabad in case of the deceased petitioner for assessment year 1986-87, it was submitted that the Tribunal had accepted the stand of the petitioner that the petitioner had filed return for the said assessment years voluntarily and the case deserved to be considered as one filed under the amnesty scheme on the basis of relevant Board circular referred to in paragraph No.5 of order dated 27/9/1993. Mr.Kazi emphasized the finding of the Tribunal to the effect that the presence of two Inspectors of the Income Tax Department at the time of search conducted by the Enforcement Directorate at the residence of son-in-law of the deceased petitioner cannot be considered as detection of any concealed income by the Income Tax Department. The Tribunal for the reasons stated in its order of 27/9/1993 remitted the matter to the file of Assessing Officer with a direction to consider the application for waiver of interest charged under Sections 139 & 217 of the Act in accordance with law and in light of various circulars of the Board.

8.1 Mr.Kazi further invited attention to order dated 8/12/1993 wherein the Assessing Officer while giving effect to the order of the Tribunal for A.Y.1986-87 has waived interest under Sections 139 & 217 of the Act on the basis of facts discussed in the order of the Tribunal and circular no.441 dated 15/11/1985 published by the Central Board of Direct Taxes.

8.2 Similarly for the said assessment year i.e. assessment year 1986-87 Mr.Kazi referred to order dated 5/12/1994 passed by the Deputy Commissioner of Income Tax (Appeals), Range IV, Ahmedabad cancelling the penalty levied under Section 271(1)(c) of the Act in light of the order of the Tribunal as well as the aforesaid circular no.441.

8.3 In light of the aforesaid orders of the Tribunal, the Appellate Authority and the Assessing Officer for assessment year 1986-87 Mr.Kazi assailed the findings recorded by the respondent that the petitioner had not voluntarily disclosed income, and that the disclosure was not in good faith. It was submitted that all the findings recorded by the Commissioner were bad in law and the consequential rejection of the waiver application for assessment year 1987-88 was unwarranted in the facts and

circumstances of the case.

9 Mr.M.R.Bhatt, learned Senior Standing Counsel appearing on behalf of the respondent submitted that when the officers of the Enforcement Directorate conducted search on 27/5/1986 two inspectors of the Income Tax Department were present and it was subsequent to such action that the deceased petitioner for the first time filed disclosure petition in the name of her late husband on 29/5/1986. It was therefore submitted that the order made by the respondent was perfectly justified on facts and circumstances of the case and no case was made out by the petitioner for interfering with the same.

10 In light of the subsequent events which have come on record by way of further affidavit dated 25/7/2002 it is apparent that for assessment year 1986-87 the case of the petitioner has been accepted by the Income Tax Department viz. the return of income filed for the said assessment year has been held to have been filed voluntarily and the case of the petitioner was governed by the provisions of the amnesty scheme. That in light of the circulars issued by the Central Board of Direct Taxes from time to time interest levied under Section 139(1) and 217 of the Act as well as penalty under Section 271(1)(c) of the Act have been deleted and cancelled respectively on the basis of return being voluntarily and that the petitioner's case is fulfilling the requisite requirements of the amnesty scheme. It is an admitted fact that for assessment year 1987-88, to which the present petition relates same set of facts and circumstances prevailed as were applicable for assessment year 1986-87, the only difference being that the amnesty scheme would not be applicable for assessment year 1987-88 as the period was over and hence the requirement of waiver application for the said assessment year. It is further necessary to note that for assessment year 1987-88 the order of CIT (Appeals) upholding the returned income in case of the petitioner and deleting the additions made has been upheld and confirmed by the Tribunal while dismissing the appeals filed by the revenue.

11 In the aforesaid facts and circumstances of the case it would be in the interest of justice if the impugned order dated 11/3/1991 passed by the respondent is quashed and set aside and the matter is remanded to the respondent for deciding the same on merits after taking into consideration the subsequent developments. Accordingly, order under Section 273A(1) of the Act dated 11/3/1991 passed by the Commissioner of Income Tax,

Gujarat III, Ahmedabad is hereby quashed and set aside and the waiver application filed by the petitioner for assessment year 1987-88 shall now be heard and decided by the Commissioner on merits after giving necessary opportunity to the petitioner. The petition is allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

(M.S.Shah, J)

(D.A.Mehta, J)

m.m.bhatt